



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP Nos.2636, 2647 & 2629 of 2021
and
CMP No.19513 of 2021

1.N.Jayachandran
2.R.Sathyavathy
3.N.Ravichandran
4.N.Ramachandran
5.G.Nirmala

...Petitioners in all CRPs

Vs

1.R.Vijayabalan

...1st Respondent in CRP.2636 &
2629 of 2021 and 2nd Respondent
in CRP.2647 of 2021

2.R.Nallathambi

...2nd Respondent in CRP.2636 &
2629 of 2021 and 1st Respondent
in CRP.2647 of 2021

Prayer in CRP.Nos.2636 & 2647 of 2021: Civil Revision Petitions filed under Article 227 of the Constitution of India against the Order and Decretal order dated 23.07.2021 in REA.Nos.1 and 3 of 2019 in REP.No.169 of 2018 in O.S.No.862 of 1984 respectively on the file of the I Additional Subordinate Judge, Salem.

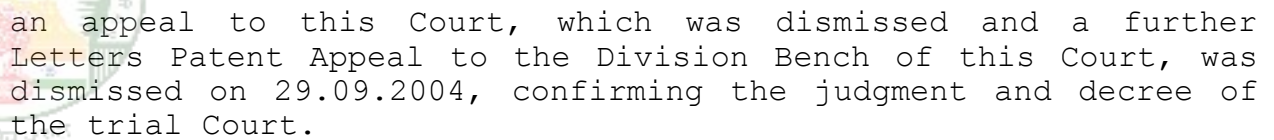
Prayer in CRP.No.2629 of 2021: Civil Revision Petition filed under Article 227 of the Constitution of India against the Order and Decretal order dated 23.07.2021 in REP.No.169 of 2018 in O.S.No.862 of 1984 on the file of the I Additional Subordinate Judge, Salem.

(In all CRPs)
For Petitioner : Mrs.AL.Ganthimathi

COMMON ORDER

These three revisions arise against the execution proceedings. The petitioners herein, who are the legal representatives of the first plaintiff in O.S.No.862 of 1984 sought to execute a decree for specific performance in the said suit.

2.The suit was originally decreed on 13.11.1986. There was



3. In 2006, the second plaintiff in the suit sought execution of the decree in REP.No.94 of 2006. The said Execution Petition came to be allowed and on appeal by the judgment debtors in CMA.No.73 of 2006, it was held that the Execution Petition itself was not maintainable and the E.P. came to be dismissed. The order in CMA.No.73 of 2006 came to be passed on 23.12.2009. Thereafter, the present execution petition was filed by the petitioners herein, who are the legal representatives of the first plaintiff in the said suit on 17.08.2017. Upon receipt of notice, the original second plaintiff in the suit one Mr.R.Nallathambi filed an application in REA.No.3 of 2019 seeking rejection of the E.P. on the ground that it is barred by limitation. The only defence that was projected by the petitioners to the claim that the E.P. was barred by limitation, is the pendency of the CMA and the proceedings before the Court in REP.No.94 of 2006.

5.The Executing Court upon consideration of the effect of Section 14 held that the petitioners cannot invoke the benefit of exclusion of time provided under Section 14 and hence, the Execution Petition is barred by time. On the said conclusion, the learned Subordinate Judge allowed REA.No.3 of 2019 and dismissed REP.No.169 of 2018. REA.No.1 of 2019, which is for an injunction was also dismissed. Hence, the three revisions.

7. Mrs. Ganthimathi would submit that the pendency of the CMA actually prevented the petitioners from filing an Execution Petition. I am unable to concur with her submission. Even in the suit, it was found that the first plaintiff whose L.R.s are the petitioners before me had assigned her right in favour of the second plaintiff. The decree itself was passed directing execution of sale deed in favour of the first plaintiff or in favour of her nominee the second plaintiff. Therefore, the second plaintiff sought to execute the decree in REP.No.94 of 2006 and the said attempt failed. Now, the first plaintiff namely, the original agreement holder had come up with the



instant application seeking execution of the decree. As already stated the decree was confirmed by the Division Bench of this Court in a Letters Patent Appeal on 29.09.2004. Therefore, the last date for filing the E.P. was 12 years from 29.09.2004 i.e., 29.09.2016. The Execution Petition in E.P.No.169 of 2018 was filed on 17.08.2017. On the face of it, the Execution Petition is barred by time. An attempt is made to invoke Section 14. Section 14 provides for exclusion of time taken in bonafide prosecution of proceedings in the Court without jurisdiction. The petitioners never approached the Court seeking execution earlier and now they cannot take shelter under the proceedings taken by the other plaintiff, who also ultimately failed in getting a sale deed executed in his favour. By no stretch her imagination can Section 14 be invoked by the petitioners, who were sitting on the fence and watching the proceedings. The petitioners were also parties to CMA.No.73 of 2006. So, they were aware of the disposal of the CMA. Even, thereafter they did not take any steps to seek execution.

8. Be that as it may, once it is found that Section 14 does not apply, the execution proceeding is clearly out of time and I do not find any error or material irregularity in the order of the trial Court in allowing REA.No.3 of 2019 seeking to strike of the E.P. The other two orders in R.E.A.No.1 of 2019 and REP.No.169 of 2018 are consequential upon the allowing of REA.No.3 of 2019. Therefore, all the three Revisions fail and are accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vs

To:

1. The I Additional Subordinate Judge, Salem.
2. The Section Officer,
VR Section, Madras High Court, Chennai.

+1cc to M/s.A.L.Gandhimathi, Advocate, S.R.No.65004

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KSM(CO)
RGA(28/12/2021)